



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
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MEMORANDUM FOR DISTRIBUTION

FROM: Christopher Wagner /s/ *Christopher Wagner*
Commissioner, Small Business/Self-Employed Division

Heather C. Maloy /s/ *Heather C Maloy*
Commissioner, Large and Mid-Size Business Division

IRC § 6677 – Penalty for Failure to File Information With Respect to Certain Foreign Trusts

The purpose of this memorandum is to introduce four redesigned letters to be used, effective immediately, for making a determination of the penalties provided under IRC § 6677, *Failure to File Information With Respect to Certain Foreign Trusts*. This memorandum serves as interim guidance. IRMs 20.1.9.13 and 20.1.9.14 will be updated to include these letters and provide information on penalty assessment and computation.

IRC § 6677 provides that persons, who transact with, or own, certain foreign trusts, and who fail to file complete and accurate Forms 3520, *Annual Return to Report Transactions With Foreign Trusts and Receipt of Certain Foreign Gifts*, and/or Forms 3520-A, *Annual Return of Foreign Trust With a U.S. Owner*, may be assessed penalties for such failures unless it is shown that such failure was due to reasonable cause and not to willful neglect.

The four redesigned letters (revised 04-2008), are now available through the Publishing Product Catalog and are as follows:

- Letter 3804 – Notice Required by IRC 6677
- Letter 3943 – Closing Acceptance for IRC 6677
- Letter 3944 – Closing Letter for IRC 6677
- Letter 3946 – Closing Letter for IRC 6677-Reasonable Cause Rejected

A cross-functional team, led by the Office of Notice Improvement, developed these letters. The team was charged with consolidating the eight letters previously used and to create clearer letters for the IRS to use and the taxpayer to understand.

The four letters above replace the following eight letters:

- Letter 3742 (10-2003), Notice under IRC 6677 regarding failure to file Form 3520
- Letter 3743 (10-2003), Propose Penalty for Form 3520
- Letter 3799 (11-2003), Inform Taxpayer of Intent to Assert Penalties under IRC 6677 for Form 3520A
- Letter 3804 (11-2003), Notice Required by IRC 6677
- Letter 3943 (1-2005), Closing Acceptance for IRC 6677
- Letter 3944 (1-2005), Closing Letter for IRC 6677
- Letter 3945 (1-2005), Advisory about IRC 6677 Penalties and LCCI Offering
- Letter 3946 (1-2005), Closing Letter for IRC 6677-Reasonable Cause Rejected

All copies of the eight letters shown above, including those with any prior revision date, will be destroyed.

By reducing the number of letters previously used to administer the penalties provided under IRC § 6677, and by incorporating taxpayer-specific (fill-in) information into the redesigned letters, taxpayers and the IRS both benefit. Attached is a Guide to Redesigned Letters Application that explains the new fill-in features of these letters.

For the taxpayer, the redesigned format of the letters coupled with filled in information specific to them, will provide the taxpayer with an easy to follow, complete, and comprehensive summary of their failing to comply with IRC § 6677 and the respective penalties for such failure. For the IRS, fewer letters equate to lower costs and less confusion in selecting and sending the appropriate letter to the taxpayer.

If you have any questions, please contact Susan Deidrich, Senior Program Manager Servicewide Penalty Program, or a member of your staff may contact Kent Rinehart, Senior Program Analyst, Servicewide Penalties.

Attachment: Guide to Redesigned Letters Application

Cc: www.irs.gov

Attachment Guide to Redesigned Letters Application

Letter 3804 (4-2008) is a five page opening Notice Letter required to be mailed to a taxpayer under the provisions of IRC § 6677(a). It includes three pages of Frequently Asked Questions about the penalty, reasonable cause, and other pertinent information. In order for this notice to be complete and accurate, in addition to the heading, salutation, and closing of the letter, there are six additional items that need to be filled in the body of the letter as follows:

- Page 1 – First paragraph – delete the **[enter name of foreign trust]** text and enter the actual name of the foreign trust (up to 28 characters).
- Page 1 – Table – delete the **[taxable years or 'none' if none]** text in each of the two blocks shown under the column entitled “Taxable Year(s)” and enter the actual taxable year(s) for the respective returns. If the return does not pertain to your taxpayer, leave the “Taxable Year(s)” block blank for that return.
- Page 1 – Last paragraph – delete the **[respond by date]** text and enter the same date as in the “Respond by:” section in the heading of the letter.
- Page 2 – First paragraph (after table) and last paragraph – delete the **[respond by date]** text in each paragraph and enter the same date shown on Page 1 for each paragraph.

Letter 3943 (4-2008) is the Closing Acceptance Letter to be utilized after a taxpayer responds and the examiner determines that no penalties will be asserted. There are three additional items that need to be filled in the body of the letter as follows:

- First paragraph – delete the **[trust name]** text and enter the actual name of foreign trust (up to 26 characters).
- Table – delete the **[taxable years or 'none' if none]** text in each of the two blocks shown under the column entitled “Taxable Year(s)” and enter the actual taxable year(s) for the respective returns. If the return does not pertain to your taxpayer, leave the “Taxable Year(s)” block blank for that return.

Letter 3944 (4-2008) is the Closing No Response Letter to be utilized when a taxpayer either fails to respond to Notice Letter 3804 (1-2008) or when a taxpayer does not provide a statement of reasonable cause for failing to file such returns. There are six additional items that need to be filled in the body of the letter as follows:

- First paragraph – delete the **[foreign trust name]** text and enter the actual foreign trust name (up to 20 characters).
- First paragraph – delete the **[date]** text and enter the date shown on Letter 3804 that was originally mailed to the taxpayer.
- Table – delete the **[taxable years or 'none' if none]** text in each of the two blocks shown under the column entitled “Taxable Year(s)” and enter the actual taxable year(s) for the respective returns. If the return does not pertain to your taxpayer, leave the “Taxable Year(s)” block blank for that return.
- Penalty amounts – enter the **[Initial Penalty]** dollars, the **[Continuing Penalty]** dollars, and the **[Total Penalty Due]** dollars, in the space provided to the right of the dollar sign (“\$”) for each item.

Guide to Redesigned Letters Application

Letter 3946 (4-2008) is the Closing Reasonable Cause Rejected Letter to be utilized after a taxpayer responds and the examiner determines that penalties will be asserted. The actual letter to be mailed to the taxpayer is preceded by two pages of information (**not to be mailed to the taxpayer**) that provide selectable items to be inserted to the body of the letter as appropriate. The additional items that need to be filled in the body of the letter are as follows:

Under the subheading **Why We Are Writing to You:**

- First paragraph – delete the **[foreign trust name]** text and enter the actual foreign trust name (up to 41 characters).
- First paragraph – delete the **[date of statement]** text and enter either the date (if provided) of the taxpayer's response or the date the taxpayer's response was received by the IRS.
- Second paragraph – delete the **[Use selectable reason from page 1.]** text and enter the most appropriate reason from the nine reasons shown on the first of two pages that precede the actual letter.
- Third paragraph – delete the **[Use selectable scenario statement from page 2.]** text and enter one of the three scenarios in the right hand column of the table based on the conditions described in the left hand column. Note: Within each scenario, you will need to delete the **[trust name]** and **[date]** texts and enter the actual name of the trust and enter the date shown on Letter 3804 that was originally mailed to the taxpayer.

Under the subheading **What You Will Be Assessed**

- Delete the **[date of letter]** text and enter the date which should match the "Date:" shown in the heading of the letter.
- After the dollar sign ("\$\$"), enter the dollars of the total penalty to be asserted, which should match the total penalties to be determined in the tables on the last page of this letter.

Under the subheading **What You Need To Do**

- First bullet – delete the **[respond by date]** text and enter the same date as shown in the "Respond by:" field shown in the heading of this letter.
- Second bullet – After the dollar sign ("\$\$"), enter the dollars of the total penalty.
- Second bullet – Delete the **[respond by date]** text and enter the same date as shown in the "Respond by:" field shown in the heading of this letter.
- Third bullet – After the dollar sign ("\$\$"), enter the dollars of the total penalty.
- Fourth bullet – Delete the **[respond by date]** text and enter the same date as shown in the "Respond by:" field shown in the heading of this letter.

On the third page of the letter entitled **Penalty Calculations**

- Complete the respective tables as appropriate with respect to Form 3520 and/or Form 3520-A.